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7 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**
8 **OF THE STATE OF WASHINGTON**

9 IN RE THE MATTER OF ENFORCEMENT
10 ACTION AGAINST

PDC CASE NO. 03-147

11 FINAL ORDER

12 Marilou Rickert,
13 Respondent

14 The Washington State Public Disclosure Commission (Commission) conducted an
15 adjudicative proceeding (enforcement hearing) in the above-captioned matter on July 29, 2003
16 at the Commission offices at the Evergreen Plaza Building, 711 Capitol Way, Room 206,
17 Olympia, Washington. The hearing was held pursuant to chapter 34.05 RCW, chapter 42.17
18 RCW, WAC 390-37, and WAC 10-08. The Commissioners present included: Susan Brady,
19 Michael Connelly, Lois Clement, Francis Martin, and Earl Tilly. Assistant Attorney General
20 Nancy Krier, Commission Counsel, was also present.

21 Appearing for the Respondent was her attorney Venkat Balasubramani. Attorney
22 Aaron H. Caplan was also present. The Respondent Marilou Rickert was also present.

23 Appearing for the PDC staff was Linda Dalton, Senior Assistant Attorney General,
24 PDC Staff Counsel.
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1 Also present were Susan Harris, PDC Assistant Director; and Vicki Rippie, PDC
2 Executive Director.

3 PDC staff member Ruthann Bryant served as recorder/reporter of the proceedings. The
4 proceedings were tape recorded. The proceedings were open to the public.

5 II. PREHEARING PROCEDURAL MATTERS

6 A prehearing order was entered June 2, 2003, and the order governed the proceedings.

7 III. HEARING

8 Argument Considered.

9 The Commission considered the written memoranda filed by the parties, and oral
10 argument presented at the hearing. Those written memoranda included: the Respondent's
11 "Response to Notice of Administrative Charges of the Director of Compliance of the Public
12 Disclosure Commission", the PDC Staff's "Prehearing Memorandum" and "Dr. Rickert's
13 Reply Brief." While the Commission explained it could not rule upon the Respondent's
14 constitutional challenges, she was permitted to preserve the arguments in the record.

15 Evidence Considered.

16 The Commission considered the written and oral evidence offered by the parties. That
17 evidence included:

18 Written Exhibits. The parties stipulated to admission of the following exhibits in
19 advance of the hearing, and they were admitted into evidence at the hearing:

20 *PDC Staff's Exhibits* – B (Political Advertisement), C (PDC Notice of Administrative
21 Charges), D (Formal Complaint by Sheldon), F (01-03 Revised Omnibus Operating Budget
22 DSHS), G (ESSB 6387 Final Bill Report), H (Roll Calls on a Bill, Votes on ESSB 6387), I (e-
23 mail from Wood to Rickert), J (Deposition of Rickert), K (Deposition of Wood).

24 *Respondent's Exhibits* – 7 (RCW 28A.190.020), 8 (RCW 72.05.010), 9 (E-mail from
25 Wood to Rickert), 10 (PDC Staff's Response to Interrogatories and Requests for Production).

26 In addition, the following exhibits were admitted:

PDC Staff's Exhibits - A (PDC Report of Investigation), E (Letter from David Griffith).

Respondent's Exhibits – 1 (Newspaper Article Re: Senate Race 2002), 2 (Newspaper Article Re: Sheldon), 3 (Newspaper Article Re: Mason Library), 5 (Declaration of Rickert), 11 (Vote Green 2-Page Wrapper), 12 (Direct Mailing Information).

Testimony. The Commission considered the oral testimony of the following persons:

Tim Sheldon, State Senator; Sally Parker, PDC Political Finance Specialist; Dave Wood, contract lobbyist for Action for Residential Habilitation Centers; David Griffith, Program Administrator, Juvenile Rehabilitation Administration, Department of Social and Health Services; and Marilou Rickert, Respondent.

Based upon the above, the Commission makes the following findings:

IV. FINDINGS OF FACT

1. The Respondent was the Green Party candidate for the Washington State Senate from the 35th District during the 2002 general election. She challenged incumbent Senator Tim Sheldon, who was the Democratic Party candidate in the same election. (Exhibits B, C, 1, 5; Testimony of Rickert; Testimony of Sheldon).

2. In deciding to run for office, the Respondent testified she reviewed the April 12, 2002 newspaper article admitted as Respondent's Exhibit 2, which contained the following statement: "As for his budget-vote, Sheldon-says-he-may-be-the-only-Democrat-in-the-Legislature who voted against the Mission Creek closure." (Exhibit 2; Testimony of Rickert.) She also testified she probably reviewed the April 18, 2002 newspaper article admitted as Respondent's Exhibit 3, which stated, "Sheldon says his vote against the budget was the only vote in the Legislature to save the Mission Creek Youth Camp." (Exhibit 3; Testimony of Rickert).

3. Prior to its closure, the Mission Creek Youth Camp was a DSHS medium security facility for juvenile offenders. (Testimony of Griffith; Testimony of Sheldon).

4. Senator Sheldon did not vote in the Washington State Legislature to close Mission Creek. (Testimony of Sheldon). Senator Sheldon voted against ESSB 6387, the appropriation bill that specifically called for the closure of Mission Creek. (Exhibits F, G, H; Testimony of Sheldon).

5. The Respondent wrote and paid for a political advertising brochure, copy at Exhibit B, which was titled “THERE IS A DIFFERENCE.” The brochure stated that Senator Tim Sheldon “voted to close a facility for the developmentally challenged in his district.” The brochure was mailed to voters in the 35th district between October 16, 2002 and October 28, 2002. (Exhibit B; Testimony of Rickert).

6. Before preparing and mailing the brochure, the Respondent made no effort to verify Senator Sheldon's voting record including but not limited to contacting his office, contacting the Legislature or legislative staff, or checking the Legislature's website. (Testimony of Rickert).

7. The general election was held November 5, 2002. Senator Sheldon was re-elected. (Exhibit 5).

8. On November 13, 2002, the Respondent wrote to several newspapers serving the 35th District, stating that the Mission Creek Youth Camp “was a youth rehabilitation center, not a facility for the developmentally challenged.” (Exhibit A-11; Exhibit 5).

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction to hear this matter pursuant to RCW 42.17.350 et seq., including RCW 42.17.370(5).

2. The PDC staff has the burden to establish a violation of RCW 42.17.530 by clear and convincing evidence.

3. While the Respondent challenges the constitutionality of RCW 42.17.530 on its face and as applied, as an administrative agency, the Commission must presume the statute is constitutional.

1 4. RCW 42.17.530 states:

2 (1) It is a violation of this chapter for a person to sponsor with actual malice:

3 (a) Political advertising that contains a false statement of material fact about
4 a candidate for public office. However, this subsection (1)(a) does not apply to
5 statements made by a candidate or the candidate's agent about the candidate
6 himself or herself;

7 (b) Political advertising that falsely represents that a candidate is the
8 incumbent for the office sought when in fact the candidate is not the incumbent;

9 (c) Political advertising that makes either directly or indirectly, a false claim
10 stating or implying the support or endorsement of any person or organization
11 when in fact the candidate does not have such support or endorsement.

12 (2) Any violation of this section shall be proven by clear and convincing
13 evidence.

14 5. RCW 42.17.505 states:

15 The definitions set forth in this section apply throughout RCW
16 42.17.510 through 42.17.540.

17 (1) "Actual malice" means to act with knowledge of falsity or with reckless
18 disregard as to truth or falsity.

19 (2) "Sponsor" means the candidate, political committee, or person paying for
20 the advertisement. If a person acts as an agent for another or is reimbursed by
21 another for the payment, the original source of the payment is the sponsor.

22 (3) "Incumbent" means a person who is in present possession of an elected
23 office.

24 6. The Respondent was a candidate who sponsored political advertising by paying
25 for the campaign brochure.

26 7. The brochure contained two false statements. The false statements were the
statements that (a) Senator Sheldon voted to close the Mission Creek Youth Camp, and (b) that
Mission Creek was a facility for the developmentally challenged.

 8. The false statements were material in the campaign. The Respondent chose the
statements as ones to highlight the differences between her and Senator Sheldon in political

1 advertising mailed one to two weeks before the general election. The statements involved the
2 voting record of an incumbent state senator in a small community.

3 9. The Respondent acted with actual malice or reckless disregard in sponsoring the
4 false statements in the brochure by (a) having actual knowledge of Senator Sheldon's
5 statements about the fact that he did not vote to close Mission Creek (through her admitted
6 review of the newspaper articles), yet publishing the statements nonetheless; and, (b) failing to
7 make even a cursory check of Senator Sheldon's voting record prior to publishing the
8 brochure.

9 10. The PDC staff met its burden to establish that the Respondent violated RCW
10 42.17.530 by clear and convincing evidence.

11 Based upon the above findings and conclusions, the Commission unanimously finds a
12 single violation of RCW 42.17.530 by the Respondent, enters the following order and
13 authorizes the Executive Director to sign the order on its behalf:
14

15 VI. ORDER

- 16 1. The Respondent committed a single violation of RCW 42.17.530.
17 2. The Commission imposes a penalty of \$1,000.

18 VII. APPEALS

19 Reconsideration By The Commission

20 Any party may ask the Commission to reconsider this final order. Parties must place
21 their requests for reconsideration in writing, include the specific grounds or reasons for the
22 request, and deliver the request to the Public Disclosure Commission Office within TEN (10)
23 days of the date that the Commission serves this order upon the party. Service is defined at
24 RCW 34.05.010(19) as the date of mailing, or personal service. Pursuant to RCW
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1 34.05.470(3), the Public Disclosure Commission is deemed to have denied the petition for
2 reconsideration if, within twenty (20) days from the date the petition is filed, the Commission
3 does not either dispose of the petition or serve the parties with written notice specifying the
4 date by which it will act on the petition. Pursuant to RCW 34.05.470(5), the Respondent is not
5 required to ask the Public Disclosure Commission to reconsider the final order before seeking
6 judicial review by a superior court.
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8 Judicial Review – Appeal Rights

9 Pursuant to RCW 42.17.395(5), a final order issued by the Public Disclosure
10 Commission is subject to judicial review under the Administrative Procedure Act, chapter
11 34.05 RCW. Pursuant to RCW 34.05.542(2), a petition for judicial review must be filed with
12 the superior court as specified in the statute. The petition for judicial review must be filed with
13 the superior court and served on the Public Disclosure Commission and any other parties
14 within 30 days of the date that the Public Disclosure Commission serves this final order on the
15 parties.
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17 If reconsideration is properly sought, the petition for judicial review must be served on
18 the Public Disclosure Commission and any other parties within thirty (30) days after the
19 Commission acts on the petition for reconsideration. The Commission will seek to enforce this
20 final order in superior court under RCW 42.17.395-.397, and recover legal costs and attorney's
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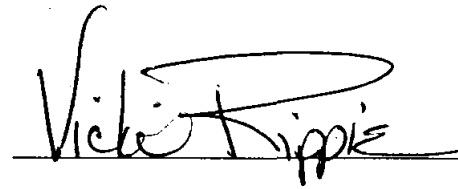
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1 fees, if the penalty remains unpaid and no petition for judicial review has been timely filed
2 under chapter 34.05 RCW. This action will be taken without further order by the Commission.

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4 So ORDERED this 19th day of August, 2003.

5 WASHINGTON STATE PUBLIC
6 DISCLOSURE COMMISSION

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10 VICKI RIPP
11 Executive Director
12 On Behalf of the Commission

13 MAILING DATE OF THIS ORDER:

14 August 19, 2003 RCB

15 Copies mailed to:

16 Marilou Rickert, Respondent

17 Venkat Balasubramani, Respondent's Attorney

18 Linda Dalton, Senior Assistant Attorney General
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